established by Executive Order 12958 to be kept secret in the interests of national defense and foreign policy.

Therefore, in accordance with section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), I have determined that, because of the need to protect the confidentiality of such national security matters, this meeting should be closed to the public.

Dated: October 31, 1995.

John D. Holum,

Director.

[FR Doc. 95–27586 Filed 11–2–95; 4:31 pm]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of Open Meeting. Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

DATES: The NII Advisory Council public teleconference will be held on Monday, November 20, 1995 from 2:00 p.m. until 5:00 p.m.

ADDRESSES: The NII Advisory Council teleconference meeting will take place in the Forum 2 Conference Room, 1320 North Courthouse Road, Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Lyle, Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, NW., Washington, DC 20230. Telephone: 202–482–1835; Fax: 202–501–6360; E-mail: nii@ntia.doc.gov.

AUTHORITY: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

AGENDA: To discuss and approve KickStart, a document the Council is preparing for local leaders who want to connect their communities to the Information Superhighway.

PUBLIC PARTICIPATION: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Elizabeth Lyle at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–27368 Filed 11–3–95; 8:45 am]

BILLING CODE 3510–60–M

Bureau of Export Administration

[Docket Number AB1–95]

Stair Cargo Services, Inc.; Final Decision and Order Affirming Order of the Administrative Law Judge

Before me for decision is the appeal of Respondent, Stair Cargo Services, Inc. (Stair Cargo), from the decision and order of the Administrative Law Judge (ALJ). The ALJ found that Stair Cargo violated Sections 769.2(d)(1)(iv) and 769.6 of the Export Administration Regulations (15 CFR 769.2(d)(1)(iv) and 769.6) (the ''Regulations'') when it submitted information for the Kuwait boycott office about one of the manufacturers in a shipment that Stair Cargo was forwarding to Kuwait. For violating § 769.2(d)(1)(iv), the ALJ assessed a penalty of $8,000 and for violating § 769.6, Stair Cargo was assessed a penalty of $2,000, both pursuant to § 788.3(4) of the Regulations.

I. Introduction

On December 17, 1993, the Office of Antiboycott Compliance (OAC) issued a charging letter alleging that, during December of 1988, Stair Cargo committed one violation of § 769.2(d)(1)(iv) and one violation of § 769.6 of the Regulations, issued pursuant to the Export Administration Act of 1979, as amended (hereinafter referred to as the ''Act'') (currently codified at 50 U.S.C. app. 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994).[1] Specifically, the charging letter alleged that Stair Cargo intentionally complied with an unsanctioned foreign boycott in connection with activities involving the sale or transfer of goods (including information) between the United States and Kuwait and that these activities occurred in the foreign commerce of the United States.

Section 769.2(d)(1)(iv) provides that ''(1) No United States Person may furnish or knowingly agree to furnish information concerning his or any other person's past, present or proposed business relationships—(iv) With any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country.''

Section 769.6(a)(1) provides that ''(1) A United States person who receives a request to take any action which has the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country against a country friendly to the United States or against any United States person must report such request to the Department of Commerce in accordance with the requirements of this section.''

OAC and Stair Cargo, on March 10, 1995 and March 16, 1995, respectively, requested that issues raised by the charges be resolved on the written record, without an oral hearing. OAC filed a reply on March 31, 1995 and Stair Cargo filed one on April 3, 1995. On April 24, 1995, Stair Cargo filed a motion for an oral argument which was denied by the ALJ.

[1] The Export Administration Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. app. 1701–1706 (1991)).

II. Facts

The ALJ made Findings of Fact in his Initial Decision, and the parties entered into a Stipulation of Facts (see Exhibit 16 of the Record) dated February 22, 1995, both of which essentially set forth the following facts.

At the time of the violations alleged in the charging letter, Stair Cargo was a California-based branch of Stair Cargo Services, Inc., a Florida company engaged in freight-forwarding services, including international freight forwarding. In 1988, Stair Cargo was to forward U.S. origin goods to Palms Agro-Production (Palms Agro) in Safat, Kuwait, on behalf of Spears Manufacturing company. To finance the purchase of the goods from Spears Manufacturing, Palms Agro, on October 13, 1988, asked the National Bank of Kuwait to establish an irrevocable letter of credit in favor of Spears Manufacturing. Among the requirements set forth in the letter of credit was the following:

> Available by draft(s) without recourse at sight on you for 100 percent of the invoice value and accompanied by the following documents marked (X) below:
>
> * * * * *
>
> (X) Certificate of origin in duplicate * * * (Please see special instructions) Invoices and certificates of origin must evidence that goods have been manufactured/produced by: M/S Spear [sic] Manufacturing Co., U.S.A.

Paragraph 1 of the ''SPECIAL INSTRUCTIONS'' prescribed that the name and nationality of the manufacturing/producing company appear on the certificate of origin.

However, Spears Manufacturing was not the sole manufacturer of the goods to be shipped to Kuwait. Rather, I.P.S. Corporation of Gardena, California, produced some of the items to be sent to Palms Agro. As the terms of the letter of credit required information regarding each manufacturer or producer of goods, Stair Cargo drafted an amendment to the letter of credit, reflecting the name and nationality/origin of both Spears Manufacturing and I.P.S. Corporation. On December 19, 1988, Stair Cargo sent the amendment by fax transmission to Spears Manufacturing. The amendment provided in pertinent part:

> Credit amended to read signed invoices in triplicate showing the name and nationality/origin of manufacturers or producers of each item of manufactured or produced goods as follows:
>
> Nationality: U.S.A. origin * * * Manufactured/produced I.P.S. Corp. 17109 S. Main St. Gardena, CA 90247 U.S.A. All remaining items manufactured/produced by M/S Spears Manufacturing Co. 15853 Olden St. Sylmar, CA 91342 U.S.A.

That same day, Spears Manufacturing sent the amendment to Palms Agro so that the Kuwaiti firm could have the letter of credit amended.

Shortly thereafter, on December 22, 1988, Palms Agro sent a fax transmission to Spears Manufacturing, requesting the full name of the company that, in addition to Spears Manufacturing, was supplying products to fill Palms Agro's order. Palms Agro explained that the initials of I.P.S. Corp. were not acceptable to the boycott office and that, until the full name was provided, the National Bank of Kuwait could not clear I.P.S. Corp. with the boycott authorities. The request stated:

> Please provide complete name of M/S/ I.P.S. Corp. as abrivated [sic] names are not acceptable to local boycott office, as before adding to L/C our bank will get the name cleared from boycott authorities.
>
> Please ensure that after receiving the amendment your bank will send the documents by DHL (not on our cost) to our bank because carrying vessel is due on 28/ 12/88.
>
> Appreciate your reply by return.

This fax was subsequently transmitted to Stair Cargo. By fax dated December 22, 1988, Stair Cargo responded directly to Palms Agro. The fax transmission stated:

> The complete name of M/S I.P.S. Corp. is as follows: Industrial Polychemical Services, Inc.

This fax transmission became the basis for the ALJ's finding that Stair Cargo ''furnished information concerning its or another person's past, present, or proposed business relationships with known or believed to be restricted from having any business relationship with or in a boycotting country,'' in violation of § 769.2(d)(1)(iv).

III. Analysis of Appeal [2]

A. Deference To Be Accorded to ALJ's Decision

As a threshold matter, Stair Cargo argues that the Under Secretary is not bound by, nor is there any deference due to, the findings of the initial decision of the ALJ, citing 5 U.S.C. 557(b). This provision provides:

> On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except on notice or by rule.

I agree that the initial decision of the ALJ is not absolutely binding on me. *Town & Country Plastics, Inc.*, Docket Number AB1–89, May 11, 1995. However, while deference to a decision may be at its strongest where credibility is at issue, I still believe that there is sufficient reason to accord great weight to the AJL's decision in a case decided on cross motions for summary judgment.

B. Denial of Stair Cargo's Request for a Hearing Was Appropriate

Stair Cargo argues that it was entitled to a hearing on questions of law and controverted material issues of fact, citing 11(c)(2)(B) of the Act, 50 U.S.C. app. 2410(c)(2)(B), which provides that an administrative sanction imposed under the antiboycott provisions ''may be imposed only after notice and opportunity for an agency hearing on the record in accordance with [the Administrative Procedure Act].'' Stair Cargo also argues that Rule 56 of the Federal Rules of Civil Procedure (FRCP) is applicable in this case because the procedures which govern enforcement proceedings do not provide for summary disposition. Accordingly, because summary judgment, as provided for in Rule 56, is a drastic measure and available only when there are no genuine issues of material fact, Stair Cargo asserts that a resolution of this case is not proper without a hearing with respect to the genuine issues that exist. Finally, Stair Cargo argues that it did not waive its right to a hearing during the course of the proceeding.

Contrary to Stair Cargo's assertions, it is clear that the FRCP do not apply to proceedings under the Act, which are, in fact, governed by the Regulations. See § 788.1. Although the Regulations do not specifically authorize motions for judgment on the pleadings, such motions fall within the discretion of the ALJ pursuant to § 788.12 of the Regulations, which grants ample discretion to dispose of matters in the most expeditious manner, provided that all other procedural requirements are followed.[3]

In addition, Stair Cargo cites *Town & Country Plastics, Inc.*, Docket Number AB1–89, May 11, 1995, for the proposition that in the absence of a specific rule under the Regulations, the FRCP ''govern.'' However, while *Town*

[2] Arguments raised by Stair Cargo not discussed have been considered and rejected as being without merit or as being immaterial to the final decision. The conclusions reached are based on consideration of the record as a whole.

[3] § 788.12 provides in pertinent part:

(a) The Administrative Law Judge, on his own motion or on the request of a party, may direct the parties to attend a pre-hearing conference to consider:

(1) simplification of issues;

(2) the necessity or desirability of amendments to pleadings;

(3) obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(4) such other matters as may expedite the disposition of the proceedings * * *

& Country Plastics held that ''the procedural rules relating to antiboycott appeals should be construed in conjunction with the Federal Rules of Civil Procedure,'' the case did not hold that the FRCP ''govern'' or are binding. Rather, *Town & Country Plastics* should be read to mean that the FRCP can provide guidance or solutions on a case-by-case basis when necessary to cover a situation not specifically dealt with by the Regulations.[4] Accordingly, Rule 56 of the FRPC is not applicable to this case and therefore does not dictate that Stair Cargo was entitled to a hearing.[5]

With regard to Stair Cargo's argument that it did not waive its right to a hearing, a review of the record in this case indicates otherwise. Although Stair Cargo did request a hearing in its Answer (Exhibit 4 of the Record), circumstances changed as the litigation progressed, and, as set forth in its Motion for Summary Initial Decision (Exhibit 22 of the Record), Stair Cargo waived its right to a full blown hearing. Stair Cargo clearly stated in its motion that ''counsel for the parties have by agreement pursued this avenue of resolution in order to obviate the need for a hearing'' and that ''it is appropriate to note that motions for summary judgment are appropriate when there are no questions of material facts.'' There was obviously no mention of a desire for a hearing.

It was, moreover, agreed at a pre-hearing conference in Washington, DC, on February 22, 1995, that the essential facts were not at issue and that, because the only issues that remained to be resolved were those of a legal nature, the case could be disposed of on cross-motions for summary judgment. In fact, at the pre-hearing conference, Stair Cargo answered in the affirmative when the ALJ asked if the stipulation of facts were comprehensive enough so that he could reference it in resolving the legal issues to be presented in the parties' motions. Exhibit 24 of the Record, Transcript of Prehearing Conference, at 20.

It was not until after receiving OAC's response to its motion for summary initial decision that Stair Cargo moved to set a date for oral argument, submitting that oral argument could ''provide better exposition of the complex legal issues raised by each party in their respective memoranda and replies.'' Stair Cargo, however, did not contend that controverted facts remained. In sum, the ALJ appropriately denied the request for a hearing.

C. The ALJ Ruled Correctly That OAC Did Not Have To Present Evidence That Kuwait Maintains an Unsanctioned Boycott Against Israel or That Kuwait Maintains a Blacklist or Restrictions on Persons Because of the Boycott

In its appeal, Stair Cargo argues that the ALJ's decision is inconsistent with OAC's burden of proof when he found that it violated § 769.2(d)(1)(iv) without requiring OAC to present evidence establishing that Kuwait maintained a blacklist and further, that the ALJ was not entitled to take official notice of alleged Kuwait boycott practices, without giving notice to Stair Cargo pursuant to Section 556(e) of the Administrative Procedure Act (APA). More specifically, Stair Cargo claims that OAC failed to sustain its burden of proof by failing to establish or to provide any contemporaneous legal authorities as to Kuwait's actual boycott laws, regulations, or practices. Stair Cargo alleges that proof of a violation of § 769.2(d)(1)(iv) requires that OAC prove that Kuwait does in fact maintain and enforce a secondary or tertiary boycott by blacklisting non-Israeli firms from doing business in Kuwait because of their relations with Israel or other blacklisted firms.

The ALJ found that OAC was not required to establish that the particular request was related to an unsanctioned foreign boycott of Israel by Kuwait, nor prove that Kuwait maintains a blacklist or restrictions on persons because of the boycott. The ALJ stated:

> These are both underlying assumptions that led Congress to enact section 8(a) of the Export Administration Act which prohibits providing information under the circumstances presented here. The agency does not have to justify the statue or properly promulgated rules under which it acts when it seeks to enforce them.

Initial Decision, at 9, n. 5.

I agree with the Initial Decision. Neither the Act nor the implementing Regulations requires that OAC present evidence that Kuwait participated in blacklisting activities. Regardless of the information provided by Stair Cargo with respect to the lack of adherence by some of the countries of the Arab League to certain aspects of the boycott, the statute is unambiguous and does not provide for exceptions in instances where a country does not strictly adhere to an acknowledged boycott. It merely states that a ''United States person may [not] furnish * * * information concerning his or any other person's * * * relationships * * * with any person who is * * * believed to be restricted from having any business relationship with or in a boycotting country.''

Moreover, it is an irrefutable fact that, at the time of the violations at issue, Kuwait was a member of the Arab League which maintained an unsanctioned foreign boycott of Israel. Congressional action with respect to the Act was motivated by and responded to this very issue.[6] Congress enacted the Act as ''necessary to prevent a boycotting country from using United States persons to supply information necessary to boycott enforcement.'' *Report of the Committee on Banking, Housing and Urban Affairs,* S. Rep. No. 95–104, 95th Cong., 1st Sess. 25 (1977). Thus, Congress sought to terminate the flow of information which was commonly used for boycott enforcement purposes by making it increasingly difficult for the participating Arab states to gather such information.

Accordingly, in my view, anytime information is requested by a boycott office of a member of the Arab League, a presumption arises that such information is to be used in furtherance of the Arab League boycott. Whether Kuwait does or does not strictly enforce the voluntary provisions of the secondary and tertiary boycotts is irrelevant; the more pertinent question is whether providing the full name of the I.P.S. Corporation supplied the boycott office with information with which it could further the intent of the boycott. Until the Arab League boycott no longer exists or unless Kuwait withdraws from the Arab League, Kuwait should be presumed to be a participant and a beneficiary of the terms of the boycott.[7] Therefore, OAC does not have to establish that Kuwait itself maintained an unsanctioned boycott against Israel or that Kuwait maintains a blacklist or actively

[4] In *Town & Country Plastics*, Rule 6 of the FRCP provided guidance and resolution of an issue concerning a filing day which fell on Sunday, allowing an appeal to be timely filed on the next applicable business day, when there was nothing in the Regulations explicitly extending the time for filing documents when the last day falls on a Sunday.

[5] Moreover, as will become apparent from the subsequent discussion on waiver, there was no genuine issue of disputed material fact that would alter the current disposition of this case even if Rule 56 of the FRCP were, in fact, to apply.

[6] For an excellent discussion of the history concerning the formation of the Arab League boycott of Israel and the response of the United States Congress in enacting the antiboycott provisions of the Export Administration Act, see *Briggs & Stratton Corp.* v. *Baldridge*, 539 F. Supp. 1307, 1309 (ED Wis. 1982), *affirmed* 728 F.2d 915 (7th Cir. 1984) (adopting the district court's opinion at 916), *cert denied* 469 U.S. 826 (1984).

[7] According to information compiled by the OAC, the following Arab countries currently participate in one or more aspects of the Arab boycott of Israel: Bahrain, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and the Yemen Arab Republic. Egypt terminated its participation in the boycott after signing a peace agreement with Israel.

participated in secondary or tertiary boycotts.[8]

D. The ALJ Found Correctly That Stair Cargo Furnished Business Relationship Information in Violation of Section 769.2(d)(1)(iv)

In its appeal, Stair Cargo argues that OAC must prove that I.P.S. Corporation was, in fact, blacklisted, or that Stair Cargo knew or believed that I.P.S. Corporation was, in fact, blacklisted. Stair Cargo's argument misconstrues both the meaning and intent of § 769.2(d)(1)(iv). Under the Act and implementing Regulations, in order to establish a violation, OAC is required to show that the information sought and subsequently furnished was information about a U.S. person's business relationship(s), or lack thereof, with someone who may be blacklisted for boycott reasons. The ALJ found that OAC had met its burden of proof.

The information that Palms Agro sought and Stair Cargo furnished was information about Stair Cargo's and/or Spears' business relationships, or lack thereof, with I.P.S. Corporation, a person that may be blacklisted for boycott reasons. Whether or not Stair Cargo or OAC knew or believed that I.P.S. Corporation was restricted within the meaning of the Regulations is irrelevant. The ''belief'' requirement is not one that either party must have; rather, it is the document in question which provides the requisite ''belief'' by the requesting party that I.P.S. Corporation may be a blacklisted person. The question thereafter is whether a reasonable person would conclude that the information being requested or subsequently furnished was for the purpose of ascertaining whether or not I.P.S. Corporation was on a blacklist.

This interpretation is supported by § 8(a)(1)(D) of the Act which provides in pertinent part:

> [f]urnishing information about whether any person has, has had or proposes to have any business relationship * * * with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country.

This section of the Act does not support Stair Cargo's proposition that it must know or believe that the person about whom it is providing the prohibited information is restricted. Rather, the wording is passive in nature; Congress was silent with regard to the source of the knowledge or belief and opted, instead, for a broad interpretation, in that the knowledge or belief had to be about someone ''known or believed'' to be blacklisted without specifying who had to have that knowledge or belief. Accordingly, this interpretation is consistent with the lack of specificity in the statute, neither expanding nor contracting its plain language and intent.[9]

Similarly, § 769.2(d)(1)(iv) specifies neither that Stair Cargo nor OAC must know or believe that the person about whom it is providing information is restricted from having a business relationship with or in a boycotting country. The Regulation is as broad as the Act that it implements. In addition, examples (x) and (xviii), which provide guidelines and illustrate the manner in which the Regulations are interpreted, do not support Stair Cargo's argument that there is a specific knowledge requirement.

Example (x) provides:

> U.S. Company A, in the course of negotiating a sale of its goods to a buyer in boycotting country Y, is asked to certify that its supplier is not on Y's blacklist.
>
> A may not furnish the information about its supplier's blacklist status, because this is information about A's business relationships with another person who is believed to be restricted from having any business relationships with or in boycotting country.

The rationable whereby A is prohibited from furnishing the requested information in the example has nothing to do with any knowledge or belief that A has. Rather, an answer to the request is prohibited because the information is about A's business relationships with a person that may be blacklisted, whether or not this belief or knowledge actually exists. Moreover, a reasonable person analysis is consistent with this application of the statute.

Example (xviii), likewise, supports the interpretation of this decision. It provides:

> U.S. company, A is asked by boycotting country Y to certify that it is not * * * in any way affiliated with any blacklisted company.
>
> A may not furnish such a certification because it is information about whether A has a business relationship with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

As with the previous example, example (xviii) does not specify that A must know or believe that it is not affiliated with a blacklisted company. On the contrary, the implication suggests otherwise—it would be impossible for A to have any such knowledge or belief without knowing who was on any one of a number of blacklists. Given the ''negative basket'' wording of the request, it is clear that A need not have knowledge or belief about the blacklist status of any specific company. Rather, the prohibition applies because, in the context of which the information is sought, it is clear that the requesting party is seeking information about A's business relationships with anyone who may be blacklisted for boycott reasons.

Stair Cargo also claims that proof that Kuwait has blacklisted or otherwise restricted I.P.S. Corporation is essential to OAC's case and disputes the rationale that it would be too difficult to prove who is actually blacklisted. However, to require what Stair Cargo suggests would be contrary to Congressional intent in enacting the antiboycott provisions of the Act, and would make it virtually impossible to establish a violation of § 769.2(d)(1)(iv). Stair Cargo's interpretation would require that OAC establish that it had a basis for knowing or believing I.P.S. Corporation's blacklisted status. Such a showing would require an excessive level of proof and would be difficult, given that blacklists are not publicly available and are not constantly being reviewed and updated. See *Report of the Committee on International Relations,* H.R. Rep. No. 95–190, 95th Cong., 1st Sess. 49(1977). As the Arab countries participating in the boycott of Israel prepare and individually use their own blacklists, each may contain names of different persons. As the ALJ

[8] In response to Stair Cargo's argument concerning official notice, whether and to what extent Kuwait actually enforces the boycott policy of the Arab League are not material facts relevant to this proceeding, since the policy or goal of the Arab League members is to maintain such a boycott, and Kuwait remains a member of the Arab League. There is no dispute as to the existence of the boycott. OAC thus is no resting on official notice of a material fact for purposes of APA Section 556(e), and accordingly, OAC does not have to give notice with respect to the unsanctioned boycott.

[9] Stair Cargo argues that to read § 769.2(d)(1)(iv) as not requiring proof that the subject of the communication is restricted renders much of the subsection as surplusage, which is contrary to accepted principles of statutory construction. However, contrary to Stair Cargo's claim, the interpretation established in this opinion would not render the subsection meaningless. Specifically, the prohibition in subsection (iv) must be read in context with the other three sections. These subsections prevent a United States person from furnishing or agreeing to furnish information about past, present, or future relationships (i) with or in a boycotted country; (ii) with any business concern organized under the laws of a boycotted country; or (iii) with any national or resident of a boycotted country. It is self-evident that these pertain to related, but separate, violations from those under (iv). The first three are more ''direct'' violations in that the relationships are between the parties. Subsection (iv) is a broader prohibition that prevents the party in question from divulging information about any other person who may be restricted from having a relationship with or in a boycotting country, and does not affect or encroach upon the prohibitions set forth in subsections (i), (ii), and (iii).

appropriately noted in his decision, ''it is difficult to actually know who is restricted by the boycott because of the complex, pervasive, and often unpredictable, system for maintaining the boycott.'' Initial Decision, at 7, n.3. This view was recognized by the court in *Briggs & Stratton Corp. v. Baldrige, supra,* at 1309. In that case, the court found that ''[d]ecisions to blacklist a company are made haphazardly'' and that sometimes the boycott countries continue to trade with a company despite activity that could be deemed inconsistent with boycott principles.

Morever, the OAC has no statutory or regulatory responsibility to maintain copies of the numerous blacklists in use by Arab countries participating in the boycott of Israel. In fact, it would be contrary to the policy of the United States, as set forth in § 3(5) of the Act, for OAC to promulgate or maintain any document purporting to be a blacklist.

Accordingly, the fact that OAC may or may not have access to the boycott lists of any one country is not relevant and, in the event such access were to exist, would not necessitate that it be exploited for purposes of these types of proceedings. Where access to information of certain countries is available, the same cannot be said of others. Violations and enforcement of regulations obviously must be done on a uniform basis, and an interpretation of the statute requiring a level of proof suggested by Stair Cargo is impractical.

Given the foregoing analysis, the ALJ found that the information sought by Palms Agro and furnished by Stair Cargo was information about Speaker Manufacturing's and/or Stair Cargo's business relationships with I.P.S. Corporation, a person ''known or believed'' to be blacklisted. The only reasonable interpretation of the request suggests that there was uncertainty as to the blacklist status of I.P.S. Corporation.

The request stated, in relevant part:

> Please provide complete name of M/S/ I.P.S. Corp. as abrivated[sic] names are not acceptable to local boycott office as before adding to L/C our bank will get the name cleared from boycott authorities.

If it were known that I.P.S. Corporation was not blacklisted, no reason would exist to request its complete name for submission to and clearance by the boycott authorities. The sole reason stated for the request was for the purpose of getting the name ''I.P.S. Corp.'' cleared by the boycott authorities; there was no reference to any other requirement, whether it be a customs, import, or shipping requirement, to which the request pertained.[10] Thus, the request demonstrates quite conclusively that, contrary to Stair Cargo's arguments at the time of the communication, the only reason the company's full name was desired was so that it could be used for boycott purposes.[11]

Finally, Stair Cargo argues in its appeal that the decision in *Town & Country Plastics, Inc.*, AB1–89, September 21, 1990, should serve as persuasive authority in this case, although in my Final Decision and Order Affirming in Part Order of the Administrative Law Judge, AB1–89, May 11, 1995, I specifically held that the *Town & Country Plastics case* would not serve as precedent regarding the knowledge element. In *Town & Country Plastics,* the ALJ found that OAC had failed to establish that the information provided in response to a name clarification request for the Saudi Arabian Customs Office was boycott-related. Accordingly, the ALJ found that OAC had failed to establish that the company, about whom clarification was sought, was known or believed to be restricted from having any business relationships with or in a boycotting country. I do not find the *Town & Country Plastics* decision to be persuasive authority for the case at hand because the two cases are clearly distinguishable on the facts. The request in the former was for the Saudi Arabian Customs Office and contained no reference to a boycott of Israel which would raise a reasonable belief that the request was boycott-related. The request was reasonably perceived as a routine name clarification. While in this case, there was no doubt that the request was boycott-related and the information was sought for Kuwait's boycott authorities. Thus, Stair Cargo clearly knew or believed, from the context of the communications on December 22, 1988, that they related to boycott matters.

[10] Stair Cargo in its Rebuttal to OAC's Reply to its Appeal argues that, looking at the entire commercial transaction, the requirement for the full name of ''I.P.S. Corp.'' was a pure simple technical clerical requirement without reference to any implied blacklist status. However, the context of the critical communications of December 22, 1988 belie that argument.

[11] See also § 769.2(d)(4) which provides that no information about business relationships with blacklisted persons may be furnished in response to a boycott request, even if the information is publicly available. Requests for such information from a boycott office will be presumed to be boycott-based.

E. The ALJ Found Correctly That Section 769.3 Does Not Apply to Stair Cargo's Prohibited Furnishing of Business Relationship Information [12]

Section 769.3(b) of the Regulations provides that a United States person, in shipping goods to a boycotting country, may comply or agree to comply with the import and shipping document requirements of that country, with respect to (1) the country of origin of the goods; (2) the name of the carrier; (3) the route of the shipment; (4) the name of the supplier of the shipment; and (5) the name of the provider of other services. The only qualification that appears in the text of the Regulations is that ''all such information must be stated in positive, non-blacklisting, non-exclusionary terms.'' § 769.3(b)(2).

Arguing that the entire commercial context should be taken into account, Stair Cargo alleges that the furnishing of the complete name of a supplier of goods, regardless of boycott intent, in order to comply with the import or shipping requirements of the importing country, falls within the parameters of § 769.3(b).

However, regardless of the extent to which Stair Cargo protests that the motivation behind the supplying of the information was not boycott-related, the facts and the documentation show otherwise. It is not required that intent to comply with the boycott be the sole reason that Stair Cargo complied with the request. As long as it was one of the motivating factors, then Stair Cargo was found appropriately to have violated § 769.2(d)(1)(iv). The Regulations provide in pertinent part:

> (2) A United States person has the intent to comply with, further, or support an unsanctioned boycott when such a boycott is at least one of the reasons for that person's decision to take a particular prohibited action. So long as that is at least one of the reasons for that person's action, a violation occurs regardless of whether the prohibited action is also taken for non-boycott reasons. Stated differently, the fact that such action was taken for legitimate business reasons does not remove that action from the scope of this part if compliance with an unsanctioned foreign boycott was also a reason for the action.

[12] Stair Cargo argues in its appeal that the decision of the ALJ should be reversed because he ''failed to determine respondent's defense that the response was excepted from the prohibitions'' under § 769.3(b). Contrary to Stair Cargo's allegation that the ALJ did not respond to its arguments, the ALJ did discuss compliance with Kuwait shipping document requirements on page 5 of his Initial Decision and makes specific reference to Stair Cargo's underlying argument with respect to § 769.3(b) on pages five and six. The lack of a specific reference to § 769.3(b) does not translate into a determination that the ALJ did not consider the argument.

§ 769.1(e). Viewing the entire context of the commercial transaction does not change that result. Legislative history is quite illustrative on this point:

> Intent to comply with a boycott could be presumed, subject to rebuttal, where from all the circumstances it is reasonably clear that the information is sought for boycott enforcement purposes * * * On the other hand, where the information is sought in a context which does not make it reasonably clear that the purpose is boycott related, no illegal intent should be presumed.

S. Rep. No. 95–104, 95th Cong., 1st Sess. 40 (1977), *quoted in Briggs & Stratton* v. *Baldrige*, *supra*, 539 F. Supp. at 1313–14. It is clear from the nature and purpose of the request in this case that at least one of Stair Cargo's reasons for furnishing the complete name of the I.P.S. Corporation was to comply with Kuwait boycott enforcement procedures. The name was given in order to be cleared by the boycott authorities prior to being added to the letter of credit, and not to comply with Kuwait import and shipping requirements.[13] Stair Cargo, as an experienced freight forwarder participating in international trade was, or should have been, aware of the nature of the request and, therefore, was on notice with regard to the purpose for which the complete name was to be utilized.

F. The ALJ Found Correctly That Stair Cargo Failed To Report to the Department of Commerce Its Receipt of a Boycott-Related Request in Violation of Section 769.6

Stair Cargo argues that § 769.6(a)(5) sets out certain exceptions to the reporting requirements that apply regardless of whether or not the requests are boycott-related. Pursuant to § 769.6(a)(5)(iv), an exception exists where there is:

> (iv) a request to supply an affirmative statement or certificate regarding the name of the supplier or manufacturer of the goods shipped or the name of the provider of services.

According to Stair Cargo, since the request in this case was for an affirmative statement of the full name of I.P.S. Corporation, the manufacturer of goods which had already been shipped, the request from Palms Agro fits squarely within the exception set forth above.

However, Stair Cargo's attempt to latch on to the exception set forth in § 769.6(a)(5)(iv) misinterprets the language and proper application of this regulation, particularly the part preceding the listing of specific requests that are not reportable under the Regulations. The preambular language indicates that the specific exceptions to the reporting requirements came about for three reasons, one of which was that certain terms were used for boycott and non-boycott purposes. The language recognizes that certain terms, depending on their context, would in some circumstances be seen as boycott-related, while in other circumstances, they would not be. In the instant case, there are no ambiguous terms in the request from Palms Agro. It is abundantly clear that the request sought to procure the complete name of the I.P.S. Corporation for submission to the Kuwait boycott office for boycott clearance. Accordingly, Stair Cargo misconstrues the exceptions of § 769.6(a)(5) when it argues that information can be furnished regardless of whether the request is boycott-related.

G. The ALJ properly assessed the penalty

In its appeal, Stair Cargo argues that assessment of a penalty in this case is ''arbitrary, capricious and an abuse of discretion * * * [given that] FRCP Rule 56 contemplates that motions for summary judgment may be entered with respect to the liability issues only, while leaving questions relating to damages to subsequent proceedings.'' Stair Cargo further contends that it did not waive its right to a hearing and that ''the consideration of aggravating and mitigating factors, are questions of material fact with respect to which the parties have a right to a hearing under § 788.13. The denial of Respondent's request for a hearing was therefore arbitrary and capricious.''

As explained in section III.B. of this Final Decision, I have already determined that a review of the record in this case indicates that Stair Cargo did, in fact, waiver its right to a hearing. As further explained in section III.B., the FRCP are inapplicable to administrative proceedings under the Regulations, which do not provide for a separate hearing in order to determine the nature and extent of damages. Nothing in § 788.13 of the Regulations contemplates any sort of bifurcated procedure as suggested by Stair Cargo. On the contrary, § 788.16 provides that, if the ALJ finds that one or more violations have occurred, he shall order an appropriate disposition of the case and ''may issue an order imposing administrative sanctions, including civil penalties as provided in § 788.3, or take such other action as he deems appropriate.'' § 788.16(b)(1).

Addressing the aggravating and mitigating factors which it claims are disputed issues of material fact, Stair Cargo had the opportunity to include such arguments in its motion or its response to OAC's motion for summary judgment. Stair Cargo was aware that the case was going to be disposed of on the pleadings and should have taken the opportunity to make every relevant argument at that time. Stair Cargo, however, presented no mitigating factors addressing OAC's request for the imposition of a $10,000 civil penalty in its motions.

Finally, Stair Cargo argues that too much weight was given to the fact that it is a freight forwarder and that the penalty was excessive. However, my review indicates that OAC could have sought the imposition of both a $20,000 civil penalty and other administrative sanctions, the denial of Stair Cargo's export privileges and/or excluding its employees from practice before the Department of Commerce. Instead, OAC sought no more than a civil penalty commensurate with the circumstances of the violations, both as an appropriate penalty and as a deterrent to ensure future compliance with the Export Administration Act and the Regulations. After consideration of all the factors in this case, OAC did not even seek the maximum amount allowed. Thus, the ALJ properly imposed a civil penalty of $8,000 for the violation of § 769.2(d)(1)(iv), and a $2,000 penalty for the violation of § 769.6. Such penalties are not excessive.[14]

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[13] It is doubtful that § 769.3(b) would be triggered by the facts of this case, as a letter of credit is neither an import document nor a shipping document. Specifically, a letter of credit does not reflect a movement of goods, as do shipping documents, but, rather, is a contract which embodies a bank's obligation to a beneficiary. It is ''an original undertaking by one party to substitute his financial strength for that of another, with that undertaking to be conditioned on the presentation of a draft or a demand for payment, and most often, other documents. John F. Dolan, *The Law of Letters of Credit*, § 2.02 (2d Ed. 1991), at 2–4. As set forth in the definition, there is a distinction between the letter of credit itself and the ''other documents'' called for in the letter of credit that may be required to satisfy it. Such documents, called ''transport documents'' in the Uniform Customs and Practices for Documentary Credits (1983 Revision), those which indicate loading on board, dispatch, or taking charge of the goods, are synonymous with the term ''shipping documents.'' However, as described in the preceding body of text, Stair Cargo furnished the full name of the I.P.S. Corporation in order to have it cleared by Kuwait boycott authorities prior to amending the letter of credit, and even if this was done to also comply with shipping requirements, as argued by Stair Cargo, § 769.1(e) would dictate that it was also done to comply with a boycott-related request in violation of § 769.2(d)(1)(iv).

[14] Guidelines for settlement negotiations have indicated that OAC would be willing to accept $4,000 for a simple furnishing of information. However, when a name is furnished, the settlement penalty is increased to $10,000. After weighing several factors, OAC opted not to seek the full

IV. Decision and Order

Based on review of the administrative record and for the reasons stated above, the order of the ALJ granting summary decision on the written record; assessing a civil penalty of $8,000 for violating § 769.2(d)(1)(iv) and a civil penalty of $2,000 for violating § 769.6 against Stair Cargo Services, Inc.; and denying Stair Cargo's request to dismiss the charges and to present oral argument and submit additional evidence is hereby AFFIRMED.

Dated: October 30, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 95–27377 Filed 11–3–95; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–570–840]

Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: David Boyland or Daniel Lessard, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4198 or (202) 482–1778.

Final Determination

We determine that manganese metal from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930 (''the Act''), as amended. The estimated sales at less than fair value are shown in the ''Suspension of Liquidation'' section of this notice.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Case History

Since the preliminary determination (60 FR 31282, June 14, 1995), the following events have occurred. The Department published an amended preliminary determination correcting a ministerial error (60 FR 37875, July 24, 1995). We conducted verification of the questionnaire responses in the PRC between July 24, 1995 and August 11, 1995, of the following respondents: China National Electronics Import & Export Hunan Company (CEIEC), China Hunan International Economic Development Corp. (HIED), China Metallurgical Import & Export Hunan Corporation (CMIECHN/CNIECHN), Minmetals Precious & Rare Minerals Import & Export Co. (Minmetals), and Great Wall Industry Import and Export Corporation (GWIIEC). Case and rebuttal briefs were filed by petitioners and respondents on October 2, 1995, and October 4, 1995, respectively. On October 6, 1995, the Department held a public hearing.

Scope of the Investigation

The subject merchandise in this investigation is manganese metal, which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the Harmonized Tariff schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is June 1 through November 30, 1994.

Best Information Available

We have based the PRC-wide rate on best information available (BIA). In administrative proceedings involving merchandise from nonmarket economy countries, the Department's consistent practice has been to treat all exporters as part of the government and assign to them the single government rate, known as the country-wide rate, unless an exporter affirmatively demonstrates that it is separate from the government and entitled to its own rate. If a non-market economy exporter does not respond to the Department's request for information, the Department has no basis to treat that exporter separately from the government and, as a result, the government (which includes the exporter) receives a margin based on best information available because one of its entities failed to respond.

In this case, the evidence on the record indicates that the respondents identified during the investigation do not account for all of the exports of the subject merchandise to the United States. As a result, it is reasonable for the Department to conclude that it did not receive responses from all exporters. In the absence of responses from all exporters, we are basing the country-wide deposit rate on BIA, pursuant to section 776(c) of the Act. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From Ukraine* (61 FR 16433, March 30, 1995)).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. As outlined in the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium* (58 FR 37083, July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

In this investigation, we are assigning to any PRC company, other than those specifically identified in the ''suspension of liquidation'' section the PRC-Wide deposit rate of 143.32 percent, *ad valorem*. This margin represents the highest margin in the petition, as recalculated by the Department for purposes of the initiation (*see Initiation of Antidumping Duty Investigation: Manganese Metal from the People's Republic of China* 59 FR 61869 (December 2, 1994)).

GWIIEC

The Department has decided to disregard the sales made by GWIIEC to the United States during the POI (*see* Comment 2 below for interested party comments on this issue). The Court of International Trade has stated the if evidence demonstrates to the Department that a respondent has

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$10,000 penalty for Stair Cargo's violation of § 769.2(d)(1)(iv) of the Regulations. See United States Department Of Commerce Reply To Respondent's Appeal From Administrative Law Judge's Order, p. 31, n. 16.